

No. 15,281

United States Court of Appeals
For the Ninth Circuit

JOHN YANDELL,

Appellant,

VS.

TRANSOCEAN AIR LINES, a Corporation,

Appellee.

APPELLANT'S CLOSING BRIEF.

J. ADRIAN PALMQUIST,

KAISER & O'NEILL,

JEREMIAH F. O'NEILL, JR.,

JOHN J. PURCHIO,

505 First Western Bank Building,

Oakland 12, California,

Attorneys for Appellant.

FILE

MAR - 1 1957

PAUL P. O'BRIEN, C

Subject Index

	Page
Jurisdiction	1
The record on appeal	3
Argument	4
Conclusion	4

Table of Authorities Cited

Cases

	Pages
Gardner v. Panama Railroad, 342 U.S. 29	4
LeGate v. The Panamolga, 221 F.2d 689	4
U. S. v. Alex Dussel Iron Works, 31 F.2d 535	4

Codes

Title 28 U.S.C.A., Section 1333	3
Title 48 U.S.C., Section 642a	2
Title 48 U.S.C.A., Section 644	3
Title 48 U.S.C.A., Section 644a	1, 2

Texts

1950 U. S. Code Congressional Service, page 2503	1
--------------------------------------------------------	---

No. 15,281

**United States Court of Appeals
For the Ninth Circuit**

JOHN YANDELL,

Appellant,

VS.

TRANSOCEAN AIR LINES, a Corporation,

Appellee.

APPELLANT'S CLOSING BRIEF.

JURISDICTION.

Appellee has raised the question of the jurisdiction of the United States District Court for the Northern District of California, Southern Division, to hear the within matter, and argues that the situs for the trial should have been the United States Court for the District of Hawaii.

The legislative history of 48 U.S.C.A. 644a is contained in 1950 U. S. Code Congressional Service, page 2503. Therein contained is a letter from the Department of Justice to the Chairman of the Judiciary Committee, signed by Peyton Ford, the Assistant to the Attorney General, which states in substance that the law in effect on August 4, 1949, with reference to the islands involved, did not cover the following points:

(1) Specify the body of substantive law applicable to these islands.

(2) Give the District Court for the District of Hawaii jurisdiction of all civil as well as criminal cases arising there.

(3) Deal with the problem of jury trials.

(4) Acknowledge the special status of Canton and Enderbury Islands, and

(5) Specify the situs for the trial of these cases.

It will be noted that the present act, 48 U.S.C.A. 644a, covers all but the last of these points. In other words, the present act leaves out only the situs for the trial of these cases. The letter from the Department of Justice indicates that the Department of Justice had studied a proposed bill sent to them by the Judiciary Committee for their comments and recommendations. In discussing the proposed bill with the former bill, which was contained in Title 48 U.S.C. 642a, the Department of Justice states in their letter as follows:

“The present bill departs from the latter by containing no provision that the situs for the trial of civil and criminal cases shall be the situs of the United States District Court for the District of Hawaii.”

It is therefore obvious that the attention of the Legislature was called to the fact that no provision for the situs for the trial of such cases was made.

In addition the Justice Department attached, as an appendix, a suggested bill drawn up by the Justice Department which did contain such a provision.

It appears, therefore, that no provision for venue of cases falling under Title 48 U.S.C.A. 644a, having been made, the question of venue must be decided with reference to the general rules of venue.

The jurisdiction of the United States District Court for the Northern District of California, Southern Division, with regard to the within matter is contained in 28 U.S.C.A., Section 1333:

“The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.”

THE RECORD ON APPEAL.

The ground for dismissal as set forth by the Honorable District Court on pages 13 to 16 of the transcript of record is that as a matter of law the action was barred, either by the Statute of Limitations or by the Doctrine of Laches. The question on appeal therefore is a question of law and not a question of fact that would in any way be altered by a transcript of record containing all of the testimony adduced at trial.

It is respectfully urged that for the purposes of this appeal the record is adequate.

ARGUMENT.

The Honorable Court's attention is again directed to the cases of *U. S. v. Alex Dussel Iron Works*, 31 F.2d 535; *LeGate v. The Panamolga*, 221 F.2d 689, and *Gardner v. Panama Railroad*, 342 U.S. 29. As set forth in the brief for appellant, these cases emphasize that the question of laches is a matter not to be mechanically applied; that a state statute of limitations is not necessarily governing, and that inexcusable delay and prejudice to the defendant, rather than mere lapse of time, must be shown.

CONCLUSION.

It is respectfully submitted that the Honorable District Court erred in dismissing the within action and that appellant is entitled to a new trial.

Dated, Oakland, California,
February 19, 1957.

Respectfully submitted,

J. ADRIAN PALMQUIST,
KAISER & O'NEILL,
JEREMIAH F. O'NEILL, JR.,
JOHN J. PURCHIO,
Attorneys for Appellant.